



EMPLOYMENT TRIBUNALS

BETWEEN

Claimant

Ms Lindy Minshull

AND

Respondent

Mrs Claire Wilson

(trading as Stepping Stones

Nursery and Woodland Adventures)

JUDGMENT OF THE EMPLOYMENT TRIBUNAL

**HELD REMOTELY
BY VIDEO (CVP)**

ON

25 August 2023

EMPLOYMENT JUDGE N J Roper

Representation

For the Claimant: In person

For the Respondent: In person

JUDGMENT

The judgment of the tribunal is that the respondent failed to issue the claimant with a written statement of particulars of employment and the respondent is ordered to pay the claimant two weeks' pay in the sum of £1,142.00.

RESERVED REASONS

1. In this case the claimant Ms Lindy Minshull has brought monetary claims for breach of contract and unlawful deduction from wages against her ex-employer Mrs Claire Wilson. The monetary claims have now been paid. The claimant seeks a further award because the respondent had not issued her with a written statement of the particulars of her employment.
2. This has been a remote hearing which has been consented to by the parties. The form of remote hearing was by CVP Video. A face-to-face hearing was not held because it was not practicable, and all issues could be determined in a remote hearing. The documents that I was referred to are in a bundle provided by the parties, the contents of which I have recorded. The order made is described at the end of these reasons.
3. I have heard from the claimant, and I have heard from the respondent. The facts are generally not in dispute. I found the following facts proven on the balance of probabilities

- after considering the whole of the evidence, both oral and documentary, and after listening to the factual and legal submissions made by and on behalf of the respective parties.
4. The Facts:
 5. The respondent Mrs Claire Wilson is in business trading as Stepping Stones Nursery and Woodland Adventures. The claimant Ms Lindy Minshull was employed by the respondent as its Office Manager (Finance) from 13 June 2022 until 18 July 2022.
 6. The claimant presented these proceedings on 21 October 2022 alleging unlawful deduction from wages in respect of her final salary and unpaid accrued holiday pay. The outstanding sum of £802.16 has now been paid and these claims are no longer pursued. However, the claimant also seeks an award because the respondent failed to issue her with a written statement of the particulars of her employment.
 7. The claimant confirmed to the tribunal in an email dated 30 December 2022 that she had not withdrawn her claim and that she wished to pursue it to tribunal for the further award. She also confirmed that this was her intention in another email to the tribunal dated 28 March 2023.
 8. The respondent has confirmed (including in its notice of appearance) that it did not issue the claimant with a statement of the written particulars of her employment. However, the respondent makes the point that the issuing of contracts of employment and related employment particulars was part of the claimant's job, and she could have arranged to issue herself with the relevant paperwork. The claimant disputes this, and she contends that she was not authorised by the respondent's system to gain access to contracts of employment, and she all was not authorised to engage with the respondent's HR partners who were responsible for issuing the relevant contracts.
 9. The claimant seeks an award of £2,476.80. This is a claim for four weeks' pay based on a 40 hour week at £15.48 per hour. This is £619.20 per week gross.
 10. Having established the above facts, I now apply the law.
 11. The Law:
 12. The claimant presented a claim in respect of deductions from wages which she alleges were not authorised and were therefore unlawful deductions from her wages contrary to section 13 of the Employment Rights Act 1996 ("the Act"). Under section 23 of the Act a complaint may be presented to this Tribunal. Under section 24(1) of the Act if the claim is well-founded then the Tribunal shall make a declaration to that effect.
 13. The claimant also claimed in respect of holiday pay for accrued but untaken holiday under the Working Time Regulations 1998 ("the Regulations").
 14. Under section 38 of the Employment Act 2002, if the employer was in breach of its duty to give a written statement of initial employment particulars and the employment tribunal finds in favour of the employee (even if no award is payable) or makes an award to the employee, then the tribunal must increase the award by an amount equal to two weeks' pay, and may, if it considers it just and equitable in all the circumstances, increase the award to all four weeks' pay instead. This will apply unless there are exceptional circumstances which would make such an award unjust or inequitable as provided by subsection 38(5). Under section 38(6) the amount of a week's pay is limited to the maximum amount of a week's pay prescribed at the relevant time. At the time of the termination of the claimant's employment this was limited to £571.00
 15. Decision:
 16. The claimant's claim for unlawful deduction from her wages was well-founded, and I make a declaration to that effect. The outstanding sum of £802.16 has already been paid by the respondent and no further award is made in this respect.
 17. It is not in dispute that the respondent failed to provide the claimant with a written statement of particulars of her employment.
 18. The effect of sub-sections 38(2) and (4) of the Employment Act 2002 is that the claimant is entitled to an award of the minimum amount of two weeks' pay, or, if the tribunal considers it to be just and equitable in all the circumstances, the higher award of four weeks' pay.
 19. The claimant was only employed for a short period of time, and I am not convinced that there are circumstances which dictate that it is just and equitable to make the higher award

- of four weeks' pay. Equally, given that ultimately it was the respondent's responsibility, I do not consider that there are any exceptional circumstances to suggest that no award should be made.
20. I therefore make an award of two week's pay under subsections 38(2) and (4) of the Employment Act 2002. This is limited to the amount of £571.00 per week which applied at the relevant time.
21. Accordingly, the respondent is ordered to pay the claimant a further award of £1,142.00.

Employment Judge N J Roper
Dated 25 August 2023

Judgment sent to Parties on
13 September 2023 by Mr J McCormick

For the Tribunal Office